In this connection I would base myself on the English authorities relating to section 17(1) of the Licensing Act, 1872, the material portion of which reads as follows :—

"17(1). If any licensed person suffers any gaming to be carried on on his premises he shall be liable to a penalty."

In that section, it was held by Mathew J. in the case of *Somerset v. Wade*[1] the word "suffers" is not distinguishable from "permits".

First of all I would refer to the case of *Redgate v. Haynes*[2] in which Blackburn J. made the following observations :—

"I agree that the mere fact that gaming was carried on on her premises would not render her liable to be convicted, because that is not "suffering" the gaming to be carried on, and if the justices were of a different opinion they were wrong; but I think, if she purposely abstained from ascertaining whether gaming was going on or not, or, in other words, connived at it, that this would be enough to make her liable; and I think that where the landlady goes to bed she is still answerable for the conduct of those whom she leaves in charge of the house, and if those persons connive at the gaming, she is responsible."

Then I take to the case of *Bosley v. Davies*[3] in which it was said that actual knowledge in the sense of seeing or knowing by the party charged is not necessary but there must be some circumstances from which it may be inferred that he or his servants had connived at what was going on. "Constructive knowledge will supply the place of actual knowledge."

Then I come to the case of *Somerset v. Hart*[4]. In that case it was said by Lord Coleridge C.J. :—

"I do not say that proof of actual knowledge on the part of the landlord is necessary . . . ."

and then a little later :—

"Where no actual knowledge is shewn there must, as it seems to me, be something to shew either that the gaming took place with the knowledge of some person clothed with the landlord's authority, or that there was something like connivance on his part, that he might have known but purposely abstained from knowing."

Finally there is the case of *Bond v. Evans*[5] where Manisty J. said :—

"In my opinion it was intended by Section 17 absolutely to prohibit gaming on licensed premises, and that the substantial effect is that the responsibility is thrown upon any person who keeps a licensed house to take proper precautions to prevent all gaming on his premises."

In the present case had the learned Magistrate applied his mind to the evidence in the light of these authorities he might well have come to a different conclusion. Whether he would have done so or not I am not prepared to say on the written notes of evidence. I will accordingly set aside the Order of acquittal and make an Order for a re-trial, though in all the circumstances of the case the Prosecution may not consider it necessary to take the matter any further.

Retrial ordered.

Re SITHAMBARAM CHETTIAR

[O. C. J. (Spenser Wilkinson J.) August 22, 1955]

[Penang — Originating Summons No. 45 of 1955]

Certiorari — Whether order for certiorari will lie to a Collector of Land Revenue acting under the Crown Lands Encroachments Ordinance (Cap. 114).

Land laws — Land gradually and imperceptibly covered by the sea which subsequently recedes leaving it high and dry — Whether such land belongs to the Crown or to the original owner.

This was an application for an order of *Certiorari* to remove into the High Court and quash an order made by the Collector of Land Revenue, Penang, under the Crown Lands Encroachments Ordinance. The applicant was the owner of the land in question which in 1925 adjoined the sea. In the course of some years the sea commenced to encroach upon the land and by about 1933 the whole or at least the major portion of the land was submerged at high water. The sea however then began gradually to retreat again and the whole of it became above the high water mark. In 1954 the Collector of Land Revenue in exercise of the powers conferred on him by s. 9(1) of the Crown Lands Encroachments Ordinance declared by a notice in the Gazette that if the land was not claimed within 6 months from the date of the notice it would be declared to be forfeited to the Crown. The applicant thereupon made a claim to the land. The Collector thereupon held an enquiry and subsequently gave his decision that the claim of the applicant to the land was not valid. He said in his decision: "In my opinion the claimant has failed to establish a claim to the land which by virtue of the imperceptible advance of high water mark over the period 1893 and 1934 became Crown property, and which as far as s. 9(1) of Cap. 114 is concerned had been abandoned by previous owners for upwards of three years." The applicant thereupon applied for an order of *Certiorari*.

Held: (1) the Collector of Land Revenue in considering and rejecting the claim of the applicant was for the purpose of *Certiorari* an inferior tribunal engaged in the exercise of a judicial act; (2) the provisions of the Crown Suits Ordinance did not prevent the Court from exercising the remedy by way of *Certiorari;* (3) the owner of land which becomes gradually and imperceptibly covered by the sea is entitled to regain possession of it if it subsequently becomes high and dry by gradual recession of the water; (4) there was therefore a clear error of law on the face of the written decision given by the Collector of Land Revenue in this case and therefore there must be an order for *Certiorari*.

Cases referred to :—

(1) *G. H. Slot & Co. v. Registrar of Trade Marks* (1939) M.L.J. 276.

(2) *Ex parte Yeo Poh Neo* (1947) M.L.J. 59.

(3) *R. v. Manchester Legal Aid Committee* (1952) 2 Q.B. 413.

(4) *R. v. Postmaster-General* (1928) 1 K.B. 291.

(5) *Errington v. Minister of Health* (1935) 1 K.B. 249.

(6) *Melayu Raya Press Ltd. v. W. L. Blythe* (1951) M.L.J. 89.

(7) *R. v. Metropolitan Police Commissioner* (1953) 2 All E.R. 717.

(8) *R. v. Northumberland Compensation Appeal Tribunal* (1951) 1 K.B. 711.
(9) *Clarke v. Hart* 6 H.L.C. 633.
(10) *Palmer v. Moore* (1900) A.C. 293.
(11) *Calmady v. Rowe* 136 E.R. 1487.
(12) *Mussumat Imam Bandi & Anor. v. Hurgovind Ghose* 18 E.R. 753; 1 Suther. 208.
(13) *Lopez v. Muddun Mohun Thakoor & Ors.* (1870), 14 W.R., P.C., 11.
(14) *Ramanath Thakoor & Ors. v. Chundernarain Chowdhry* (1862-3), Marsh. 136.
(15) *Collector of Rajshahye v Ranee Shama Boonduree Debia & Ors.* (1874), 22 W.R. 324.

APPLICATION for *Certiorari.*

R. D. Hume for the applicant.

D. C. Jackson (Sr. Federal Counsel) for the Collector of Land Revenue, Penang.

Cur. Adv. Vult.

Spenser Wilkinson J. : — This was an application for an Order of *Certiorari* to remove into the High Court and quash an order made by the Collector of Land Revenue, Penang under the Crown Lands Encroachments Ordinance (Cap. 114) in respect of certain lands situate in the North East District of Penang.

The applicant was the owner of the land in question which, at all events in the year 1925, adjoined the sea. In the course of some years the sea commenced to encroach upon the land and by about 1933 the whole or at least the major portion of the land was submerged at high water. The sea, however, then began gradually to retreat again and the whole of it is now above the high water mark.

On the 16th June, 1954 the Collector of Land Revenue, Penang in exercise of the powers conferred upon him by section 9(1) of the Crown Lands Encroachments Ordinance declared by a notice in the Government Gazette that if certain lands which included the land now in question, were not claimed within six months from the date of the notice by any person or persons able to establish a title thereto or any interest therein it would be deemed to have been forfeited to the Crown.

Upon the publication of this notice the applicant made a claim by letter to the Collector of Land Revenue enclosing an abstract of title to the land which showed that by a Mortgage dated the 18th August, 1932 the legal estate in the land had been conveyed to him and that by a Conveyance dated the 21st August, 1935 he had acquired also the equity of redemption. Thereupon the Collector of Land Revenue held an inquiry in the course of which he heard the evidence of the applicant, of a clerk in the Land Office and of the Chief Surveyor, Penang. On the 7th March, 1955 the Collector made a decision in writing in which he found that the claim of the applicant to the land was not valid. The most material part of his decision for the purposes of these proceedings is paragraph 8 thereof, which reads as follows :—

"8. In my opinion the claimant has failed to establish a claim to the land which by virtue of the imperceptible advance of high water mark over the period 1893 and 1934 became Crown property, and which as far as Section 9(1) of Cap. 114 is concerned had been abandoned by previous owners for upwards of three years."

The application before me was for an Order of *Certiorari* and I am satisfied that this is now the correct procedure in the Settlement. It was decided in the case of *G. H. Slot & Co. v. The Registrar of Trade Marks, Straits Settlements*[1] that the simplified procedure in respect of Prerogative Writs of *Mandamus,* Prohibition and *Certiorari* laid down by the Administration of Justice (Miscellaneous Provisions) Act, 1938 and the English Order LIX should be followed in the Colony of Singapore, and that case was followed in Penang in the case of *Ex parte Yeo Poh Neo*[2].

The first question that has to be decided is whether in the circumstances of this case *certiorari* lies at all, and in view of the arguments of Counsel before me this question resolves itself into two subsidiary questions as follows :—

(a) Is the Collector of Land Revenue when acting under section 9 of the Crown Lands Encroachments Ordinance the kind of tribunal and is his act in rejecting the claim of the applicant the kind of act which will justify the High Court in interfering by way of *certiorari?*; and

(b) If the Collector of Land Revenue is in the circumstances the kind of tribunal to whom *certiorari* can be addressed and if his act was a judicial act do the provisions of section 20 of the Crown Suits Ordinance prevent the Court from exercising the remedy by way of *certiorari?*

As to question (a), I am satisfied on the authorities that the Collector in considering and rejecting the claim of the applicant was for the purposes of *certiorari* an inferior tribunal engaged in the exercise of a judicial act. Sections 8 and 9 of the Crown Lands Encroachments Ordinance read as follows :—

"8. Subject to the provisions of the next succeeding section any land alienated or demised by or on behalf of the Crown which has been abandoned for three years or upwards by the person to whom it was alienated or demised or by any person claiming title through him, shall, notwithstanding that some person may be found in occupation thereof or of any part thereof, be forfeited to the Crown.

9. (1) When any land alienated or demised by or on behalf of the Crown appears to a Collector of Land Revenue of the Settlement in which such land is situate to have been so abandoned for three years or upwards,

such Collector may, with the sanction of the Colonial Secretary in Singapore or Labuan, or of the Resident Councillor in Penang or Malacca, declare by notice in the Gazette and by a notice in English, Malay, Chinese and Tamil languages posted on such land, that, unless within six months a claim to such land or to any interest therein, whether by long possession or otherwise, has been established to the satisfaction of the Collector, it shall be deemed to have been forfeited to the Crown.

(2) Unless within the term of six months so appointed a claim to the land or any interest therein is established as in such notice provided, the land shall be deemed accordingly to have been forfeited to the Crown, and any grant or lease affecting such land theretofore executed, and any deed purporting to deal with the same, or any part thereof shall be void.

(3) Whenever any land is forfeited to the Crown under this section, a notification to that effect shall be published in the Gazette and shall be posted on such land or at the police station nearest thereto."

As no point has been raised before me on the somewhat unusual use in a Settlement of the expression "alienated land", I shall assume for the purposes of this case that the land in question was land alienated or demised by or on behalf of the Crown and that if it was abandoned it was abandoned by some person claiming through the person to whom it was alienated or demised within the meaning of section 8 of the Crown Lands Encroachments Ordinance.

As I read the provisions of section 8 and sub-section (2) of section 9 of that Ordinance their combined result appears to be that even where there has been abandonment of alienated land there is no forfeiture if within six months a claim to the land or any interest therein is established by somebody. It appears, therefore, that when the Collector has decided that the land has been abandoned within the meaning of these sections it then becomes his duty, if a claim is made, to decide whether such claim is established to his satisfaction. Whether or not the Collector could decide that a claim was not established to his satisfaction without hearing the claimant I do not need to decide (although I am inclined to think that such a determination would be contrary to natural justice) because in the present case the Collector did hear the applicant as well as other evidence and reached a decision after considering the evidence thus given and the law applicable thereto.

In regard to the question of the kind of tribunal against which *certiorari* will lie one of the most recent pronouncements is to be found in *Rex v. Manchester Legal Aid Committee*[3]. In that case Parker J. delivering the judgment of the Court said :—

"That the local committee was a body of persons having legal authority to determine questions affecting the rights of subjects was admitted, and indeed, is clear. The real contest in the present case is whether they also had the duty to act judicially."

Then after discussing a number of authorities the learned Judge proceeds thus :—

"In none of these cases, except possibly *Rex v. Woodhouse, Ex parte Ryder*, could it be said that the body in question had before it any form of lis or any duty to hear two sides, and we do not accept that test.

The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively . . . . Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry."

I would here remark that the references in the decided cases to a "body of persons" or "tribunal" include cases where the tribunal is a single individual. This is made clear in particular by the cases of *Rex v. Postmaster-General*[4] and *Errington v. Minister of Health*[5], both of which were cited in the judgment I have just quoted.

It is not very easy to reconcile some of the decided cases which deal with the question of what is an administrative and what is a judicial act. In *Melayu Raya Press Ltd. v. W. L. Blythe*[6] Murray-Aynsley C.J. decided that the act of withdrawing a licence from a printing press was in the circumstances before him a judicial act, whereas in *Rex v. Metropolitan Police Commissioner*[7] it was held that the Commissioner of Police in exercising his power to revoke a licence to a cab driver was exercising an administrative and not a judicial or quasi-judicial function. I think the case before me, however, comes within the principles laid down in the *Manchester Legal Aid Committee's*[3] case, because I think here that the body concerned (i.e. the Collector) considered objections and considered evidence in order to arrive at a decision and thus had the duty to act judicially in the course of his inquiry.

Having dealt with question (a) above the next question arises upon the submission of Federal Counsel that *certiorari* does not lie in this case because it was open to the applicant to proceed under section 20 of the Crown Suits Ordinance by way of Petition of Right. That section so far as it is here relevant reads as follows :—

"20. Any claim against the Crown founded on the use or occupation or right to the use or occupation of Crown Lands in the Colony . . . . . which would, if such claim had arisen between subject and subject, be the ground of an action at law or suit in equity, and any claim against the Crown for damages or compensation arising in the Colony, shall be a claim cognizable under this Ordinance."

In the first place I am by no means sure that the existence of some other remedy is necessarily a bar to proceedings by way of *certiorari*, though it might affect the exercise of the Court's discretion in the matter. No authority was cited to me on this point. Secondly it must be borne in mind that the proceedings before the Collector were initiated not by the applicant but by the Collector. There is really no question here

of a claim against the Crown in the sense of cause of action. The "claim" he makes is rather in the nature of a statement of fact than a cause of action. It is true that under the Crown Lands Encroachments Ordinance the applicant is bound to place his claim before the Collector of Land Revenue if he is to prevent a forfeiture and this he has done; but until the Collector issues the notice under section 9(1) of that Ordinance the applicant had no reason to make any claim which could properly be brought under a Petition of Right. Moreover, if the applicant were to make a claim by a Petition of Right now, after the Collector has made his decision, the Crown would have a complete defence so long as the Collector's decision stands, because as a result of that decision there would be a forfeiture of the land to the Crown. I am, therefore, unable to accept the contention that section 20 of the Crown Suits Ordinance has any effect upon the question whether *certiorari* lies in the present case.

Having come to the conclusion that in relation to the tribunal concerned and the kind of decision which has been made *certiorari* will lie, it now becomes necessary to decide whether there has been either a lack of jurisdiction in the tribunal or an error in law upon the face of its decision such as to justify this Court in making an order. Mr. Hume on behalf of the applicant bases his application both upon an error in law on the face of the proceedings and also upon an excess of jurisdiction. Dealing first with the second of these contentions, I find it difficult to see in what respect it can be said that there has been an excess of jurisdiction. Mr. Hume argued that it is no part of the Collector's business to decide a question of title and that if there were two rival claimants to the same piece of land he would have no jurisdiction to decide between the two. It may be correct that in a case where there are two rival claimants the Collector would not have to decide which of the two had a better title; he would have to decide, however, whether or not a title had been established, and he might well be satisfied that one of two rival claimants was entitled to the land without deciding which of them it was. I cannot agree with the suggestion that the Collector does not have to decide a question of title — I think it is the very thing he has to decide. He has to decide whether a person has established a title. It appears to me from his grounds of decision that he properly considered the question of whether the applicant had established a title and came to the decision that he had not.

If *certiorari* is to go in this case it must in my opinion be on the ground of an error in law on the face of the proceedings. On this point Mr. Hume relied upon the decision of the Divisional Court in *Rex v. Northumberland Compensation Appeal Tribunal*[8]. That case decided that the High Court had jurisdiction to quash by *certiorari* the decision of an inferior tribunal where the latter has embodied the reasons for its decision in its order — has made a "speaking order" — and those reasons are bad in law. That decision was upheld by the Court of Appeal (1952) K.B. 339. The judgments of both the Divisional Court and the Court of Appeal in that case make it abundantly clear that if the High Court is satisfied that there is in the decision by the tribunal in question an error in law on the face of it then that decision can be quashed.

I have set out earlier in this judgment the particular paragraph of the Collector's decision which I look upon as being crucial on this issue. It was not argued before me, and I do not propose to decide, whether in fact the land in question had been abandoned within the meaning of sections 8 and 9 of the Crown Lands Encroachments Ordinance, although in view of the decision in *Clarke v. Hart*[9] referred to in *Palmer v. Moore*[10] I have some doubts as to whether the applicant has done any act amounting to abandonment or waiver of his rights in the land in question. If there was no abandonment, then it may well be that the Collector had no jurisdiction either to issue the notice in the Gazette or to hold the inquiry which he did. I prefer, however, to base my decision in this case on the Collector's finding that the applicant had failed to establish a claim to the land . His decision on this point is based on the fact that the high water mark had by imperceptible movement of the sea advanced inland, so that at one time the whole of the land had become part of the sea-shore or sea-bed. Paragraph 7 of the Collector's decision reads as follows :—

> "7. It is apparent that the advance of the high water mark from the 1893 position to the 1934 position was by imperceptible movement of the sea inland, and it follows that as high water mark crept inland so the land below it became Crown land."

The crux of this case as argued before me is whether when the sea advanced over somebody's land and subsequently retreats the land becomes permanently the property of the Crown as being part of the foreshore or sea-bed or whether, on the gradual recession it reverts to the original owner or becomes the property of the person whose land at that time is adjacent to the high water mark.

There is no doubt that in those cases where the sea simply recedes the land thus gradually uncovered goes as an accretion to the land adjoining, so that the owner of the land thus adjoining the sea gains additional land by the action of the forces of nature. There is equally little doubt that where the sea

gradually encroaches upon the land the owner of the land thus encroached upon loses the use of it by reason of the forces of nature. What then is to happen in the somewhat unusual case of the sea first advancing and later retreating as in the present case? Federal Counsel contended that in such a case the land either became the property of the Crown or became the property of the owner of the land immediately adjacent to the high water mark as it receded. The second part of this proposition would appear at first sight to be the more logical view, and in a case where the whole of the land which was first covered by sea and subsequently left dry belonged to one owner no difficulty would arise. But in the present case the land happens to be divided into a series of strips parallel with the sea-shore which are not all owned by the same person. The various lots being somewhat narrow if all the submerged lots when uncovered are to go to what is described as the owner of the land adjacent to the sea the final question of ownership will depend on exactly how far the sea finally went before receding again. If, for example, the sea encroached in turn upon lots A, B, C. D and E, then if it just touched lot F so as to bring the owner of lot F within the definition of "adjoining owner", he would gradually acquire the whole of lots E, D, C, B and A as they became uncovered. If, however, the sea failed by as much as one foot to reach the border of lot F, then lots D, C, B and A would go to the owner of lot E, and so on.

This raises considerable practical difficulties. In the present case it would be by no means easy to discover exactly which parts of the land mentioned in the Collector's notice adjoined the sea when it was at its highest point for the sea did not advance and retreat upon the line exactly parallel with the lot boundaries. If, for example, it be supposed that it is lot 27(2) or lot 27(3) which were adjacent to the sea at its highest point, is the owner of one or both of these plots to lose what the Crown by this argument suggests is really his, because it has never occurred to him that the land recently uncovered has become his or would it be the duty of the Collector to call before him all those land owners who might be said to have been owners of land adjoining the sea in order to satisfy himself whether their claims are established?

Apart altogether from the difficulties and inconveniences involved in deciding ownership upon this basis it appears to me to run counter both to principle and authority. The past history of the land cannot in my view be simply ignored, and upon general equitable principles it appears to me that where a person's land has been inundated by the sea but has subsequently again been left high and dry that the natural and proper person to own the land is the original owner. It must also be borne in mind that the original owner acquired a sea frontage and probably paid a price which took this advantage into consideration, whereas the owner of land further inland did not. In the Law of Waters by *H. J. W. Coulson* and *U. A. Forbes*, 3rd edition page 42 it is stated :—

> "Where the sea, or an arm of the sea, by gradual and imperceptible progress encroaches on the land of a subject, the land thereby covered belongs to the Crown; but where the land is suddenly overflowed, and any marks remain by which its limit can be recognised, it remains to the orignal owner, and may be regained by art or industry; or if the sea retires again it is his as before."

The authority quoted for this proposition is *Blackstone's* Commentary, *Hale, Dyer* and other textbooks of some antiquity. One passage from *Hale,* which is cited with approval in *Calmady v. Rowe*[11] (at page 1494) appears to be of some assistance on this point. I quote from the judgment in that case :—

> "Lord Hale, in his treatise de Jure Maris, speaking of the sea-shore and maritime increases, says, that, though they belong *prima facie* to the King, yet they 'may belong to the subject in point of propriety, not only by charter or grant, *whereof there can be but little doubt,* but also by prescription or usage'."

(The italics are mine). The text of *Coulson & Forbes* continues :—

> "It is very doubtful whether any length of time during which lands are submerged will bar the owner's right to them when the waters have again retired."

This statement is based on a decision of the Privy Council in the case of *Mussumat Imam Bandi & Anor. v. Hurgovind Ghose*[12]. I am not sure that this decision entirely supports the proposition stated in the text, but the judgment in that case makes it clear that in the opinion of the Privy Council different considerations arise where land is first inundated and subsequently becomes dry from those in cases which are simple cases of accretion. The following passage from the judgment of the Privy Council appears to me to be of some assistance in deciding the case now before me :—

> "In the Sudder Court, the Judges were divided in opinion, and though three against one concurred in the decision, one of the three decided upon a point which was repudiated by the other two, and these two unfortunately mistook the nature of the question which they had to try. They conceived that the question was as to alluvial land, in the sense of the land gradually gained from the river, and which having no other owner, would belong by way of accretion to the lands of the adjoining proprietor. Whereas the ownership of the adjoining lands, though essential in the consideration of a title founded on accretion, was of little or no value, in the issues actually joined between these parties."

The issue in that case concerned land which was inundated about the year 1787, remained covered with water till about 1801, then became partially dry till in 1814 and finally having re-appeared above the surface of the water by the year 1820 had become very valuable land.

I am not unmindful of the fact that in that case the Privy Council were dealing with a case from India where the law may to some extent differ from the English law and also that they were dealing with land inundated by a river and not by the sea. Similar considerations apply to the cases of *Lopez v. Muddun Mohun Thakoor & ors*[13]; *Ramanath Thakoor & ors. v. Chundernarain Chowdhry*[14] (set out in a footnote to the report of *Lopez's*[13] case); and the *Collector of Rajshahye v. Ranee Shama Boonduree Debia & ors.*[15] upon which Mr. Hume relied. Nevertheless I think the judgments in all these cases can be taken as indicating that the considerations which may apply to alluvial land in the sense of land gradually gained from the water do not apply to lands in the possession of an owner which are first inundated and subsequently left dry; and that the original owner recovers his property in the latter circumstances.

The first branch of Federal Counsel's contention is that adopted by the Collector of Land Revenue in reaching his decision. It is that as the foreshore advanced the land vested in the Crown and therefore now remains the property of the Crown. No authority was cited in support of this proposition which appears to rest solely upon the Common Law right of the Crown to the foreshore. There is no doubt of the ownership by the Crown of the foreshore, and if anything had been built upon or works carried out on any part of the land in question whilst it was foreshore different considerations might have arisen. This however, has not happened. The foreshore which belongs to the Crown is a constantly shifting strip of land the boundaries of which, in places where the sea periodically advances and recedes over the years cannot be easily ascertained. It appears to me that if, as the sea advances, the advancing foreshore becomes the property of the Crown so the extent of that property remains limited by the dormant rights of the original owner, which will revive if and when the land subsequently becomes uncovered.

Mr. Hume on behalf of the applicant drew my attention to certain misdirections of fact disclosed in the written decision given by the Collector of Land Revenue, but I do not think it necessary to go into these, except to remark that he was clearly wrong in looking upon 1935, the year when the applicant bought the equity of redemption, as being a date of any importance, because the applicant had acquired the legal estate in the land by virtue of the Mortgage Deed of the 18th August, 1932.

I have come to the conclusion that the owner of land which becomes gradually and imperceptibly covered by the sea is entitled to regain possession of it if it subsequently becomes left high and dry by gradual recession of the water; and that just as a proprietor may lose his enjoyment of the land by the gradual advance of the sea, so the Crown may also lose the use of the foreshore originally acquired by the gradual recession of the sea.

There is thus a clear error in law on the face of the written decision given by the Collector of Land Revenue in this case, and there will, therefore, be an order that that decision be removed into this Court and quashed.

Order accordingly.

Solicitors for the applicant: *Hogan, Adams & Allan.*

TAN AH CHAN v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) August 27, 1955]

[Penang — Criminal Appeal No. 27 of 1955]

Criminal Procedure Code (Cap. 21), s. 187 — Withdrawal of charges by prosecution — Whether Court should order the discharge to amount to an acquittal.

Unless good cause is otherwise shown the Court should order a discharge under s. 187 of the Criminal Procedure Code (Cap. 21) to amount to an acquittal.

Cases referred to:—

(1) *Public Prosecutor v. Suppiah Pather* Criminal Revision No. 14 of 1951 — unreported.

(2) *Public Prosecutor v. Mat Zain* (1949) M.L.J. 147; (1948-49) M.L.J. Supp.

(3) *Goh Oon Keow & anor v. Rex* (1949) M.L.J. 35.

(4) *Seet Ah Ann v. Public Prosecutor* (1950) M.L.J. 293; 1 M.L.R. 242.

MAGISTRATE'S CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant was charged in the Sessions Court with three charges of criminal intimidation under section 506 of the Penal Code. Subsequently the charges were withdrawn by the Deputy Public Prosecutor under the provisions of section 187 of the Criminal Procedure Code, and the learned President discharged the appellant of and from the charges but did not order that such discharge should amount to an acquittal.

It would appear that although the appellant was represented by Counsel the attention of the learned President was not drawn to the numerous decisions of